

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>BRANDY ALLEN WHITAKER,</b>	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 7:13-cv-00010</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>NRVRJ, et al.,</b>	)	<b>By: Norman K. Moon</b>
<b>Defendant.</b>	)	<b>United States District Judge</b>

Brandy Allen Whitaker, a Virginia inmate proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983, challenging the calculation of his sentence. Whitaker alleges that the Virginia Department of Corrections and the New River Valley Regional Jail have miscalculated the length of his sentence by four days and seeks credit for this time toward his sentence. I find that Whitaker's claim is not cognizable in a § 1983 action and, therefore, I will dismiss this action.

"When a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973), *see generally*, *Wilkinson v. Dotson*, 544 U.S. 74, 78-82 (2005) (summarizing the distinctions between § 1983 and habeas actions). Because Whitaker only challenges the calculation of his sentence and only seeks credit toward his sentence, I find that his claim is not cognizable in a § 1983 action. Accordingly, I will dismiss this action for failing to state a claim pursuant to 28 U.S.C. § 1915A(b)(1).

**ENTER:** This 15<sup>th</sup> day of January, 2013.

  
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NORMAN K. MOON  
UNITED STATES DISTRICT JUDGE